

**Hearing on “Katrina and Contracting: Blue Roof,
Debris Removal, Travel Trailer Case Studies”**

April 10, 2006

**Committee on Homeland Security and Governmental Affairs
Subcommittee on Federal Financial Management, Government Information, and
International Security**

**Post-Hearing Questions for the Record
Submitted to Tina Burnette**

From Senator Thomas R. Carper

1. I understand that the Army Corps was not notified in advance of Hurricane Katrina that they were going to have to conduct debris removal on private property. I believe there are similar examples out there of other agencies that were not notified of what would be expected of them after the storm hit. Given the experience with past hurricanes, why were some agencies not notified in advance that they would be asked to conduct certain missions?

FEMA and USACE work together to prepare pre-scripted mission assignments, including those for debris removal, that are ready to be implemented the moment a disaster strikes, if necessary. In anticipation of such missions, USACE has awarded contracts for ice, water, and debris removal in advance of disaster operations through its Advance Contract Initiative. However, each disaster is different. The full scope and scale of the response and recovery requirements cannot be determined until after the damages and impacts are assessed. Therefore, in some cases, agencies may be tasked with missions that were not anticipated prior to the disaster. Most importantly, the USACE receives mission assignments for debris removal only when the State and local government identify the work as beyond their capability.

In most disasters, private property debris removal is not eligible for FEMA funding. When it is requested by the State, FEMA will evaluate the public health and safety threats created by private property debris in each locality before it approves funding. Therefore, in the immediate aftermath of a disaster, if USACE is tasked for debris removal, it is initially only for debris removal from public property. Only after FEMA receives, evaluates, and approves a request for private property debris removal from the State, and also determines that the work is beyond State capability, will it task USACE to perform this work. FEMA and USACE are both aware private property debris removal is a potential mission assignment activity. However, the decision to task USACE to do such work is not made in advance of a disaster.

USACE performed debris removal from private property in Fl after Hurricane Andrew in 1992. USACE is aware that FEMA will mission assign it to perform debris removal activities. However, the scope of the mission is not known until the state requests direct federal assistance and FEMA decides whether the removal of debris from private property is eligible.

2. I believe there's general agreement among most observers that FEMA does not have sufficient staff to manage and oversee contractors during a disaster – or at least they didn't during Hurricane Katrina. I know that one of FEMA's priorities now is to bring on more staff and fill long-vacant positions. I believe the President requested some funding for this purpose in his FY2007 budget but you won't be getting that money for some time. What steps have been taken in recent months to beef up FEMA contractor oversight, whether with more staff or through things like better training or procedures? With hurricane season right around the corner, do you think FEMA has the people and the systems in place to do a better job next time around?

FEMA is aggressively working to ensure that adequate numbers of personnel with the skills, qualifications, and required competencies to perform the duties involved in preparing for, responding to, and recovering from disasters. Hiring activities have been initiated since the beginning of the calendar year in order to provide more acquisition staff to issue and administer contracts for supporting recovery efforts associated with Hurricane Katrina as well as the upcoming hurricane season. Contract specialists and contract monitors have been hired and integrated into current contract management functions and are being trained in internal oversight procedures. With the additional staffing, dedicated contract positions have been allocated to the Gulf Coast region to perform contracting activities. I believe that FEMA's contracting professionals have the ability and systems in place to perform their duties and responsibilities.

3. To FEMA's credit, many people displaced by Hurricane Katrina have been temporarily housed in trailers. With the next hurricane season approaching, is there a plan in place to secure the areas where these trailers have been placed? In addition, do you have a contingency plan in place in the event that people need to stay in the travel trailers beyond the standard time limit?

While FEMA has gone through great pains to secure the trailers and manufactures homes we have installed in the Gulf Coast Region, FEMA as well as state and local emergency managers recommend that trailers and manufactured homes be evacuated in high wind events, such as tropical storms and hurricanes. Partially to address this need and partially to improve the overall preparedness, within the State of Louisiana, of the federal government, state and local government as well as the American Red Cross (ARC) and other voluntary agencies, FEMA established a Shelter Management Unit (SMU) at our Baton Rouge, LA Field Office.

The SMU, run by one of FEMA's Federal Coordinating Officers with considerable prior experience with ARC, has been working with the state, ARC, other voluntary agencies to ensure that any evacuations and sheltering are run as smoothly and efficiently as possible. To bolster capability to open, manage, and operate shelters within the Louisiana, FEMA recently competitively awarded standby contracts to two firms who are positioned to meet sheltering needs with little advance warning. These firms have stationed in Baton Rouge working alongside the SMU staff. The use of these standby contracts is only anticipated in the event a near catastrophic storm threatens the state.

With respect to a contingency plan, should temporary housing unit occupants not evacuate on time, FEMA has worked closely with the State of Louisiana to develop a transportation plan to move those who lack transportation. Having said that, buses and other forms of mass transit can not continue to operate in high winds, so options to transport people degrade quickly as storm force winds arrive. This is why it is imperative that those needing assistance follow evacuation instructions from local emergency management officials in a timely manner.

FEMA has also developed a smart SAR program to identify and be able to quickly respond to isolated problem areas (these are predefined for known situations such as hospitals, nursing homes, etc.). This is also active during operations to monitor sensitive sites, such as the trailer communities, to track as situation develops. Additionally, there are other local situational plans in the risk areas, with pre-positioned resources; to facilitate rapid support should it become necessary. The IT-TAC contract also give us the expedite capability to service areas that are traditionally not sufficiently secure for voluntary agencies to support in the immediate phase after the disaster.

With respect to temporary housing units that FEMA has installed in other Gulf Coast states, FEMA has consulted those states' emergency management officials, who indicate that they can handle any additional sheltering needs within their states existing evacuation plans.

4. Senator Coburn, Senator Obama and I introduced legislation shortly after Hurricane Katrina to establish a Chief Financial Officer for the federal government's storm response and recovery efforts. When that bill was marked up in the full committee, we added language requiring that the CFO perform the risk assessments and reporting requirements placed on agencies in the Improper Payments Information Act. Our bill, of course, never became law. I'd like to ask, then, whether you know if risk assessments have ever been performed on any of FEMA's disaster response programs to determine whether they're at risk for improper payments. This is the third time we've heard about problems with FEMA's spending controls so I would hope those assessments have taken place.

FEMA continuously reviews our assistance programs, and tries to ensure that controls are in place, so that we balance our goal of doing we can to support fast

and appropriate response and recovery efforts and ensure the fiscal integrity of our programs. The effective and efficient utilization of the taxpayer's money is a priority, and while we realize we may not be able to completely eliminate fraud and abuse, we can limit it as much as possible.

5. You say at one point in your testimony that it costs \$10,000 to install a temporary housing unit on a site – I assume on someone's property near their damaged home. I'm sure this work isn't cheap but \$10,000 seems like a lot of money to me. What is involved in installing a trailer or a mobile home? How long does the work take and how does it add up to \$10,000?

We share your concern with the high cost of installing temporary housing units in Louisiana. Based on historical averages, costs in Louisiana have truly been extraordinary. These high costs have been driven by a number of factors:

- Because of the unprecedented number of required installations (approximately 100,000 units in Louisiana alone), the Individual Assistance Technical Assistance Contract (IA-TAC) contractors hired by FEMA experienced significant shortage of skilled installation subcontractors. Normally, the same subcontractor hauls the unit from FEMA's Logistics Staging Area directly to the site and installs them. If we had applied this process in Louisiana, installers would have spent so much of their time hauling units, that there would not have been enough installers to go around. Consequently, the IA-TACs at the onset, hired subcontractors to haul the units and hired the qualified installers to focus on installing units. This resulted in having enough installers, but increased costs by having two sets of subcontractors.
- The shortage of qualified installers resulted in less competitive subcontractual bidding by the IA-TACs, further driving up prices.
- The shortage of qualified electricians, plumbers, and carpenters, all needed to finish the installation process, resulted in less competitive subcontractual bidding by the IA-TACs, further driving up prices.
- The Louisiana State Department of Health required FEMA to install drainage traps and vent pipe on the outside plumbing connection of each trailer, even though there were "p" traps and vents already inside the units. This requirement had never been applied in any previous disaster. This drove up the cost of plumbing approximately \$750 per unit.
- FEMA was required by the electrical company to set a temporary pole for power drops to each trailer being placed on an individual site. We were not permitted to hook into otherwise undamaged electric boxes on the side of damaged homes. This added approximately \$1000 to the cost of installing each unit. This requirement has not been applied to FEMA's trailers in other disasters.

With respect to the time to install a trailer, once an installation crew arrives on site, the placement of the trailer takes less than a day, then plumbing, carpenter, and electrical crews must perform their work. Without any limiting factors, this trade work is often accomplished within days of the trailer being installed. Since there are often separate hauling and installing contractors, there have been cases

where a trailer has been hauled to a site and the installation crew did not arrive for several days to install the unit. This was most prevalent in the early days of the disaster and has improved as the IA-TACs improved the project and logistics management systems.

6. I'm interested in learning some more about the process for approving some of the large contracts FEMA awards during disasters like Hurricane Katrina. When you award a non-competitive contract to a Bechtel, who in your organization approves it and determines that it's appropriate and the price is reasonable? At one point down the road do you try to compete the work in order to get a better price?

FEMA was in the process of putting into place – when Katrina hit – some national competitively bid contracts. Full and open competition requires several steps in following procurement regulations. The large numbers of displaced individuals and the need to deliver housing options to them quickly, is precisely the reason we were unable to begin contract work in the Gulf Region with a full and open competition.

That said, last fall, FEMA put out Requests for Proposal (RFQ) on the largest chunk of the needed ongoing work in the Gulf Coast (equivalent of \$1.5 billion in multiple contracts to local small and small disadvantaged businesses). While we estimated those contracts would be awarded in February, the RFQ resulted in FEMA receiving hundreds of proposals in response to the RFP. It was more than any response in FEMA history and we had to form 5 review teams (as opposed to the usual one) to move through the proper review process to ensure full and open competition. But we did this quickly and as of May 2006, 34 of these contract awards have been made.

Many of the contracts awarded to support response and recovery efforts for the Katrina disaster were competed. There were also some that were not due to the enormity of the devastation and the overwhelming needs that resulted. FEMA recently undertook a major effort to ensure that its contracts to support future disasters are competed, are scalable according to need, and represent good value to the taxpayer at reasonable prices. For example, the non-competed contracts with companies such as Bechtel to haul and install trailers to temporarily house hurricane Katrina victims have recently been re-competed. Awards of these new contracts were made August 9 to six firms after a competitive process in accordance with the Federal government's procurement laws, regulations and policies. In addition to making these awards to provide victims with temporary housing, FEMA has also provided contracts for work that had been a part of the formerly non-competed contracts to 36 small and minority owned businesses worth an estimated \$3.6 billion for the maintenance and dismantling of the trailers.

QUESTIONS FOR THE RECORD FROM DR. COBURN

1. Are you monitoring below the first tier contractor for payment discrepancies? What recourse do subcontractors have if they have been underpaid or not paid at all?

FEMA's Headquarters' Program Office monitors and reviews all invoices submitted by the Prime Contractor to include any invoices submitted by Subcontractors that are included in the Prime's invoices. The Davis Bacon and Service Contract Acts are incorporated in the Basic Contract Award Document and provide ample protection to all Subcontractors working under the Prime Contractor. The Acts allow subcontractors to dispute wages or the non-payment of wages through the auspices of the U.S. Department of Labor. However, when FEMA does not have a contractual relationship beyond the prime contractor, we are not in a position to enforce those subcontracts. Subcontractors retain all legal recourses open to parties to a contractual dispute.

- a. Are prime contractors required to produce a detailed audit from the multiple layers of subcontractors they end up using? If so, who reviews and investigates this audit?

The Davis Bacon and Service Contract Acts require the Prime Contractors to maintain, as a matter of record, the payrolls for any Subcontractors utilized in meeting Government Contract requirements. Typically the Administering Contract Office review payrolls submitted by the Prime Contractor and accomplish random site inspections to interview employees on the sites to verify work disciplines and ensure the correct wages are being paid.

2. Does FEMA have the Congressional mandate to award contracts and make acquisitions or is FEMA's purpose to devise preplans before an event occurs and manage task orders and recovery efforts after an event occurs?

FEMA has undertaken efforts to address future disasters. These efforts involve several key areas - building a cutting-edge logistics system, enhancing FEMA's customer service capability, hardening lines of communication, and expediting the process of debris removal. The procurement community's efforts to support these efforts have included placing contracts with private sector companies to help ensure that orders are placed timely to help manage the recovery efforts when an event occurs. Additionally, FEMA will be ready with a variety of contingency contracts for this upcoming hurricane season. Since the last hurricane season, extensive efforts have taken place to pre-position contracts for the upcoming hurricane season. For example, FEMA is pre-positioning such contracts as Individual Assistance, Public Assistance, Hazard Mitigation Technical Assistance, and Housing Inspection services for the upcoming season. These are examples of readily available sources and contracts that will provide contingency support services for the upcoming season.

- a. How long has FEMA been making acquisitions and awarding contracts?

FEMA received procurement authority when the agency was created in 1979. Since that time, FEMA has been issuing solicitations and awarding contracts.

- b. It seems to me that FEMA is having a hard time managing and preplanning disaster recovery efforts. Isn't FEMA biting off more than it can chew by fulfilling task orders and implementing programs inside of FEMA—like with the travel trailers—instead of tasking it out to other agencies or departments who have staff with specialized experience?

Hurricanes Katrina and Rita challenged our programs and processes as never before. However, as we always have, FEMA partnered with voluntary agencies, the private sector, and our federal partners to tap into their experience and demonstrated expertise to ensure that individual and community disaster needs are addressed.

- c. According to the Inspector General, FEMA maintained little or no documentation on price reasonability as mandated by the Federal Acquisition Regulation. The Inspector General also states that FEMA's limited competition in contracting lacked objective evaluation for determining which firms received smaller contracts and which firms received significantly larger contracts. With management problems like these, would it not be a wiser use of FEMA's current \$2.5B budget to focus on cost-controls, preplanning, and thorough reasonability analysis rather than attempting to take on the role of contracting better suited for other agencies?

FEMA utilizes a variety of authorities to acquire contract support functions for goods and services from other Federal departments and agencies such as interagency agreements, memoranda of understanding, and Stafford Act authority. Federal agencies and other appropriate entities are continuously engaged to supply a variety of goods and services to aid incident management efforts under DHS-issued mission assignments or their own authorities. For example, GSA is utilized to support disasters by providing ambulance service. The US Army Corps of Engineers contracts for debris removal as it has the technical expertise and capability in this area. The Department of Transportation contracts for bridge and road rebuilding. Under the National Response Plan, as drafted, the Emergency Response Team (ERT) has the responsibility for coordinating mission assignments for direct Federal assistance as well as the procurement of goods and services with the Comptroller and Regional Resource Coordination Center.

With the additional staffing recently hired and executing contingency contracts earlier in the fiscal year, FEMA has implemented appropriate processes and procedures that maximizes competition, ensures proper controls have been established, and that FEMA's acquisitions are conducted in compliance with the Federal Acquisition Regulation (FAR). Ensuring compliance with this regulation, among other internal oversight procedures, makes certain that each Contracting Officer will have established that prices are fair and reasonable and that the appropriate level of price evaluation has been conducted. FEMA's meeting FAR requirements also entails acquisition planning that addresses all the technical, business, management, and other significant considerations, including costs, that will control the acquisition.

3. According to the GAO, FEMA's response to GAO's concerns regarding preplanning and preparedness was that it would come at a cost. Can you explain to me why the Federal Emergency Management Agency would need supplemental money on top of your normal budget to fulfill your mandate and manage emergencies? Why isn't FEMA using its current budget on preplanning and management?

FEMA does use its budget for planning and management activities before, during and after disasters strike. However, because of the uncertain nature of disaster activity, it is impossible to develop a budget request for each Fiscal Year that covers the full range of possible activities without needlessly tying up scarce resources that may never be used. FEMA is working to improve its performance based on its experience in the Katrina/Rita disaster. In some cases this has meant increased activity above what was envisioned in prior budget requests.

4. It is my understanding that prior to Katrina, FEMA did not approach the Army Corps of Engineers regarding the Blue Roof program until March which the inspector general community considers too late to adequately plan contracts. It is also my understanding that FEMA may not be able to coordinate with the Army Corps for this year's hurricane season until well after June. Can you explain the reason why FEMA is having such a hard time fulfilling its mandate of coordinating and preplanning this aspect of emergency management?

Prior to Katrina, FEMA could activate and pre-position USACE's management elements of its Temporary Roofing Planning and Response Team by way of pre-scripted mission assignment to provide for event specific planning and preparation for temporary roofing, as directed by FEMA. The mission assignment language includes a provision for the preparation to implement the Advance Contracting Initiative or other contracting process that would permit the award and execution of contracts for temporary roofing support once a declaration is made. A subsequent mission assignment could be issued to USACE, if necessary, for all post-declaration temporary roofing activities.

In preparation for the 2006 Hurricane season USACE maintains:

- three unrestricted contracts that can spend up to \$100M each to provide support for MD, VA, NC, SC, GA, FL, AL MS, LA & TX
- one restricted contract designated as “service disabled” with a cap of \$100M
- seven restricted contracts with a cap of \$25M each to support AL, FL, GA, MS, LA & TX
- five Planning and response teams ready for activation.

Prior to Hurricane Katrina, FEMA Logistics had a total of 159,951 rolls of plastic sheeting, and 36,000 tarps on hand to support the USACE teams. In support of the 2006 Hurricane Season, FEMA logistics has conducted advanced contracting and has acquired additional commodities. FEMA has acquired a total of 166,513 blue roof plastic sheeting (with an additional 31,584 rolls arriving over the next few weeks) and a total of 187,252 tarps (with an additional 341,560 tarps arriving over the next few weeks) to support the USACE teams once activated.

5. The recent GAO report indicates contracts where it took 3 weeks for FEMA to pinpoint the person responsible for oversight of the contract. Why isn't there a system set in place to clearly identify who is responsible for managing each contract?

FEMA is able to identify who is responsible for managing contracts. FEMA has recently implemented a web-based system that will provide such information for the national contingency contracts needed for hurricane support services. Additionally, greater coordination among Federal agencies has taken place in order to ensure agency contract responsibilities are clearly identified along with specific points of contact. Also, interagency agreements are being tailored to define responsibilities between the agencies. Within each of FEMA's contracts, the cognizant Contracting Officer (CO) is identified for contract responsibilities. Additionally, a Contracting Officer's Technical Representative (COTR) is identified and established as the representative assigned to perform functions of a technical nature. The CO and the COTR are responsible for the majority of contract management functions.

6. Exactly how much money is the US Army Corps taking in the pass through of funding for the Gulf Coast recovery?

From October 1, 2005, – June 30, 2006, FEMA has provided over \$4.9 billion to the U.S. Army Corps of Engineers for Hurricanes Katrina, Rita, and Wilma. Much of this funding has been through mission assignments to remove debris. This question should also be coordinated with USACE.

Senator Vitter's Questions for the Record

1. Can you explain how FEMA determined evaluated bids for the recent award of contracts for trailer maintenance and deactivation?

The firms selected were in accordance with the Request for Proposal (RFP) evaluation criteria listed in Section M of RFP. Selection was based on technically acceptable, lowest evaluated price. Those firms found technically acceptable were ranked by price. (In accordance with the RFP, the evaluated price of a non-local firms was adjusted upward by 30% for evaluation purposes only in order to provide for local preference)

2. Do the 4 large debris removal contracts contain provisions respecting disclosure of “organizational conflicts of interest” as defined in the Federal Acquisition Regulations? If not, why not? Will future procurements in this area contain such provisions? Has your office reviewed these contracts and assured itself that no such conflicts exist?

FEMA has issued a mission assignment to the Army Corp for debris removal and does not have copies of these contracts. This question should be coordinated with USACE.

3. Why did you leave the hearing before the members of the second panel, which included a local official and a representative of contractors in Louisiana, had made their presentation?

I apologize that I did not participate in the second panel discussion on April 10th hearing. I take seriously my role and look forward to and depend on the feedback and input from all of our stakeholders, including those at the State and local level. It was not my intent to appear insensitive to the feedback provided at this hearing from all levels of government.

FEMAs experience with Congressional hearings requires that once the testimony concludes, the witness is dismissed from the hearing unless otherwise asked to stay for the second panel discussion. I regret the misunderstanding and any missed opportunity to provide additional information to the committee.

4. What are your thoughts on restructuring FEMA contracting, so that big firms are given contracts that are specifically to manage the workflow and that smaller, local companies are given contracts to do work like debris removal and the blue roof program? What can be done to discourage multi-tiered contracts, because as it stands now, the big contract holders seem to be encouraged to create multiple tiers?

FEMA is researching other potential alternatives for the IATAC. We don't have specific insights into the Debris Removal and Blue Roof Program that is

supported by the Army Corps; however, we are working closely with the Army Corps to better understand the type of support that is being provided.

FEMA's current IATAC contracts have aggressive small business goals of which they have exceeded their goals. Subcontracting relationships are an integral part of our success. Many aspects of subcontracting are good for local businesses and for small businesses. For example, of the actual subcontracting dollars expended by the four large contractors, small businesses and local businesses received the following percentages:

	Bechtel	CH2MHill	Shaw	Fluor
Small Business	83.6%	77.5%	61.4%	60.1%
Local Business	67.0%	48.2%	83.0%	49.5%

Another benefit is that the relationships these contractors have formed ensure that qualified subcontractors mature their skills in each mission area and build capacity to support future FEMA's needs. As a result of these subcontracts, FEMA now has a much larger pool of highly qualified Section 8(a) and small businesses that could compete directly for future prime contracts and support our future disaster response efforts.

Under these prime contracts, approximately 487 subcontractors, employing over 10,000 people, performed substantial work for FEMA. FEMA has found that utilizing private sector expertise to manage the projects, including overseeing the performance of the subcontractor work, is the most efficient method for responding to a large-scale disaster. FEMA retains oversight through its program management office, which is constantly interfacing with the prime contractors to ensure that the contractor is complying with contract requirements.

5. What is the appropriate role of state and local governments in determining not which landfills may receive wastes from federally funded cleanups, but which landfills shall receive such wastes? Did the State of Louisiana effectively direct that certain debris be transported by Federal contractors to specified landfills?

Federal response/recovery operations are governed by all applicable Federal, State, and local authorities. The Louisiana Department of Environmental Quality (LDEQ) is the licensing authority for landfill permits, and under their emergency declaration, they may issue an administrative order to allow emergency debris disposal at appropriate landfills or sites. Certain local governments also exercise regulatory authorities for land use within their jurisdictional boundaries. No, the State of Louisiana did not direct certain debris to specific landfills. The specific landfills are determined by the type of debris being disposed of, haul distance and approval by local governments.

6. We understand that Waste Management Inc has exchanged documents with the City of New Orleans under which the City granted an emergency authorization for

a new landfill to be constructed in a wetland subject to USACE jurisdiction and Waste Management Inc. pledged to donate 20 percent of the revenue to the City. Given that a substantial portion of the “pledged” donation will be derived from USACE managed funds is this arrangement appropriate?

The land fill is not in a wetland, but adjacent to a wetland. FEMA has no knowledge of the 20% of revenue going to the city.

7. As of this date are there sufficient closure and post-closure funds provided at the Old Gentilly landfill to ensure that the USACE will not bear future environmental liability for waste disposal at the site?

Any users of landfills bear potential environmental liability associated with disposition. However, USACE's contractual obligations at Gentilly Landfill include paying a “tip” fee to compensate the City of New Orleans, the owner, and their operator for costs associated with disposition, including close out. Like other “tip” fee sites such as River Birch, Hwy. 90 C&D, and Venice Landfill, USACE has set aside no closure or post closure funds because the tip fee is intended to cover such expenses.

8. Has your office reviewed allegations that disposal of wastes at the Old Gentilly landfill is unsafe and/or unlawful? If so, what were your conclusions? Under the four \$500 million debris removal contracts, what is the role of the USACE and FEMA in determining where to dispose of hurricane generated debris? Specifically, whose decision was it to take several million cubic yards of debris to the Old Gentilly landfill?

We have reviewed all allegations in the lawsuit related to this landfill and found that a lawsuit by an environmental group against LADEQ resulted in a compromise of allowing 19,000 cubic yards of debris, per day, at the Old Gentilly landfill. Prior to the compromise, FEMA had independently decided to limit debris at 5,000 cubic yards per day based on the original pre-Katrina debris permit for the landfill. This limitation remains in effect as FEMA is still limiting the USACE to 5,000 cubic yards per day. As previously stated in response to question #5, State and local officials authorized removal of debris to the Old Gentilly landfill.

9. Do either FEMA or the USACE require that, except as specifically authorized under Federal law, federally funded debris removal contractors only use facilities that comply with all applicable Federal, state and local requirements? What Federal waivers, if any, were issued with respect to debris removal and disposal?

Yes, FEMA, USACE and all state and local governments are required to comply with all applicable Federal, State and local requirements. FEMA has not issued federal waivers, but is aware of a series of “No Action Assurance” letters issued by the Environmental Protection Agency.

- 10.** We have been advised that the Old Gentilly facility was used for disposal even though the USACE and FEMA knew that the facility did not have a Federal Clean Water Act permit for discharge of contaminated stormwater or a 404 permit required by USACE regulations as well as other environmental concerns. Is this true? What steps have the USACE and FEMA taken to ensure environmental compliance and safety?

The site of the Gentilly landfill is not located on a wetland and therefore does not require a Department of the Army permit. USACE has no evidence of contaminated storm-water being generated by the Old Gentilly Landfill either prior to or after Hurricane Katrina. Though LDEQ is the responsible agency for determining the environmental appropriateness for issuance of disposal permits, USACE performed baseline assessments of Gentilly Landfill prior to use, under the emergency response phase of work. USACE baseline assessments did not identify data supporting the abandonment of Gentilly Landfill, nor the creation of contaminated storm-water. Unless directed otherwise by the federal and State agencies responsible for landfill use, USACE will continue to use Gentilly landfill in conformance with the terms of the LDEQ permit and any subsequent amendments, terms which are similar to those for the use of all other landfills in the area.

USACE's entire work plan is designed to segregate objectionable materials from the debris streams and divert them to the proper, approved disposal location for such waste.

- 11.** The NISTAC Report, prepared by an independent FEMA contractor, concludes that FEMA could potentially be exposed to high risk of future environmental liability based on current conditions and environmental history of the site. The report also raised a concern that activities at the site might destabilize the adjacent flood protection levee. We understand that subsequent to this report, the USACE limited deliveries of additional wastes to this facility. Was this limitation in response to the NISTAC report? If so, please explain what in the report led to this restriction. The report also recommended additional studies of the potential ground and surface water contamination from wastes at this site and a further review of the levee stability issue. Did any USACE personnel observe any instances of soil instability either within the confines of the landfill or at the levee in the area of the landfill? Will the water quality and levee/landfill stability studies recommended by NISTAC be conducted? If so, when will they be conducted? If not, why not?

NISTAC was tasked by FEMA to develop a report on the Old Gentilly landfill. A draft report was submitted to FEMA based on the original closed Old Gentilly landfill. The NISTAC report, written as a draft, was never completed. LADEQ is currently drafting their own decisional document as required by the consent agreement as dictated by the lawsuit referenced in question #8.

It is FEMA's understanding that the USACE is currently reviewing the NISTAC Report. Although the EPA had approved 19,000 cubic yards per day, the USACE has reduced the landfill deposit not to exceed 5,000 cubic yards per day per FEMA directive. The USACE is actively evaluating levee stability concerns and needs associated with the Gentilly Landfil.